IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8171 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRICULTURAL UNIVERSITY

Versus

LALJI MOHAN KARIA

Appearance:

1. Special Civil Application No. 8171 of 2000

MR SA DESAI for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/03/2004

ORAL JUDGEMENT

1. This petition has been filed under Article 227 of the Constitution of India by the Gujarat Agricultural University, Junagadh to challenge the judgment and award

made by the Labour Court, Junagadh dated 4th November, 1999 in Reference [L.C.J.] No. 1732 of 1990 whereby it has been directed to reinstate the respondent on his original post with continuity of service together with 40% back wages from the date of filing of the reference i.e. 19th May, 1990.

1.1. It is the case of the respondent that he was working with the petitioner as Laboratory Boy between the period of July 1973 and January 1976 at monthly salary of Rs.130/=. According to him, he was relieved form the service by an oral order dated 12th January, 1976. At the time of termination of his service, no notice or pay in lieu of the notice or retrenchment compensation was paid to him. It is his say that even no seniority list was prepared or published at the time of termination of service and in place of the respondent, someone else has been employed. It appears that on 7th May 1990 respondent served the petitioner with a demand notice. However, the same was not complied with and, therefore, the respondent raised the dispute which was ultimately referred to the Labour Court for adjudication under section 10(1)(c) of the Industrial Disputes Act [for short 'I.D. Act'] vide order dated 25th June, 1990.

1.2. Before the Labour Court the respondent filed his statement of claim wherein all the aforesaid averments were made and on the basis of them he has prayed for reinstatement together with back wages and all other incidental benefits.

1.3. The said claim was resisted by the petitioner by filing reply at Exh. 14. It has been admitted by the petitioner that the respondent worked between July 1973 and January 1976 in the laboratory run by it. He was working as daily wager and doing miscellaneous work in the laboratory. It was contended that the respondent on his own had ceased to report for duty and ultimately it turned down that he had voluntarily abandoned the service. It was further averred that the scheme which was known as distribution of Amonium Sulphate and other fertilizer scheme wherein the respondent was working was discontinued and it has got merged into Government's Agricultural Department. According to the petitioner, since the respondent had voluntarily abandoned the employment, there was no question of complying with section 25-F of the I.D. Act. Lastly it was contended that a reference after 14 years of the order of termination of service cannot be entertained and the reliefs prayed for in such reference cannot be granted.

1.4. At the hearing before the Labour Court, the parties were required to produce evidence in support of their respective cases. So far the respondent is concerned, he had examined himself and given evidence on oath and in the proceedings demand for production of muster rolls relating to the period between July 1973 and January 1976 was made by the representative of the respondent. In response to such demand certain muster rolls were produced by the petitioner, but muster rolls for the period September 1973 to October 1973, February 1975, March 1975 and May 1975 were not produced. The petitioner also examined witness on its behalf. The Labour Court after going through the evidence adduced before it, held that since the important evidence in the form of muster rolls was not produced by the petitioner with regard to continuous service for 240 days by the concerned workman, presumption in favour of the respondent could be drawn. It was, therefore, held that the respondent had worked continuously for more than 240 days in a year and, therefore, he was entitled to protection under section 25-F of the I.D. Act. In other words, according to the Labour Court, petitioner was required to comply with the provisions of section 25-F of the I.D. Act before bringing an end to the service of the respondent. Ultimately, the Labour Court partly allowed the reference and gave aforesaid directions to the petitioner against which the present petition is filed.

2. Mr. Satyajeet Desai, learned advocate appearing for the petitioner has submitted that the order of termination was passed on 12th January, 1976. Thereafter, nothing was done by the respondent. It was only 14 years thereafter he had filed reference and no delay has been explained. The Labour Court, therefore, was in error in entertaining the reference which was filed at such a belated stage. He has further submitted that the respondent had voluntarily abandoned the service and, therefore, there was no question of complying with section 25-F of the I.D. Act. Lastly he has submitted that even the project in which the respondent was working has been discontinued and it was already now merged in the Agricultural department of the Government of Gujarat. He, therefore, submitted that this petition be allowed.

2.1. Mr. M.H. Rathod, learned advocate appearing for the respondent has supported the judgment of the Labour Court and has further submitted that on appreciation of the evidence produced before it, the Labour Court has come to the conclusion that respondent had continuously worked for 240 days in a year i.e. in the year 1975 and,

therefore, he was covered under the definition of 'workman' and before terminating his service, compliance of the provisions of section 25-F was mandatory. He has further submitted that the Labour Court has also held that though a daily wager he was 'workman' as envisaged under the provisions of the I.D. Act and his service ought to have been terminated in accordance with the requisite procedure prescribed under the I.D. Act. Lastly he has submitted that on all these counts the Labour Court has rightly held that the mandatory provisions were not complied with and, therefore, the order terminating service of the respondent was bad in law.

3. Having carefully gone through the record of the petition and having considered the rival submissions, it is clear that the respondent was working with the petitioner between July 1973 and January 1976. He was working on a daily wage basis. There is hardly any evidence on record to show that what type of work he was rendering and for how many hours. However, it appears that after his service was discontinued with effect from 12th January, 1976, the say of the petitioner is that he voluntarily abandoned the job since that day. As against that, the say of the respondent is that his service was orally terminated with effect from that date. It may be noted here that the fact remains that the respondent has ceased to report on duty with effect from 12th January, 1976, He, thereafter did not do anything. It is his say that on 1st February, 1977 and 27th July, 1988 he had made two applications to the petitioner to take him back in the service. However, it is obvious that nothing concrete had been done by him for almost 14 years. It was only in the year 1990 he had served a notice on the petitioner demanding reinstatement. He thereafter, raised the industrial dispute which was ultimately referred to the Labour Court for adjudication. There is no explanation offered by the respondent why he waited for 14 long years to approach the Labour Court. It may also be noted here that some time in the year 1980 the scheme in which respondent was working had also been closed down. If the respondent had approached the Labour Court within reasonable time, the petitioner would have effectively contested its claim. From the judgment of the Labour Court, it becomes evident that the Labour Court had drawn presumption on account of want of production of the muster rolls for certain period holding that that was a deliberate suppression. It further held that no documentary evidence has been produced by the petitioner to show that the respondent had voluntarily abandoned the service. There is all possibility that

when the reference is filed after 14 years, relevant record may not be available with the petitioner, more so, when the scheme itself had been would up and it had merged into Agricultural Department of the Government of Gujarat. In such event it was too much to expect from the petitioner to keep entire record ready for being produced before the Labour Court even after a lapse of 14 years. Nothing prevented respondent from approaching the Labour Court in time. It may also be noted that with the passage of time the post on which the respondent was working, must have been filled in by the petitioner on permanent basis. With the direction of reinstatement a person so working for the last 10 years would be required to be disturbed without there being any fault on his part. It is laid down by the Apex Court in the case of Management of M/s. Indian Iron & Steel Co. Ltd. v/s. Prahlad Singh reported in AIR 2001 S.C. p. 69 as under:-

> "11. Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case. In this case claim was made almost after a period of 13 years without any reasonable or justifying ground and there was nothing on record to explain this delay as held by the Tribunal. When the respondent did not make claim for 13 years without any justification and on merits also he had no case, the Tribunal did not rightly grant him any relief. Even otherwise the findings of facts recorded by the Tribunal in the light of the Standing Orders aforementioned cannot be said to be untenable or perverse."

3.1. Thus, when there is delay and the petitioner has been rendered totally handicapped to defend its case coupled with the fact that no plausible explanation has been offered by the respondent to explain the delay, the Labour Court was absolutely in error in drawing presumption against the petitioner and holding that the respondent was a 'workman' under the I.D. Act and before terminating his service, compliance of the requirement under section 25-F of the I.D. Act was compulsory. There is nothing on record to show whether the applications which were made by respondent dated 1st February, 1977 and 27th July, 1988 were ever received by the petitioner. It is very difficult to prove by the petitioner at this stage that they were never addressed to it. In these circumstances, it is obvious that the Labour Court has committed error in holding that there was termination of the service of a workman with effect

from 12th January, 1976 and it was bad in law because section 25-F of the I.D. Act was not complied with. Such finding is required to be interfered with.

4. In view of the aforesaid, the petitioner's petition deserves to be accepted. The judgment and award made by the Labour Court dated 4th November, 1999 in Reference [L.C.J.] No. 1732 of 1990 are hereby quashed and set aside. This petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.